

PRELIMINARY INSTRUCTIONS IN PENALTY PROCEEDINGS—CAPITAL CASES

Members of the jury, you have found the defendant guilty of four counts of Murder in the First Degree.

The punishment for this crime is either life imprisonment without the possibility of parole or death.

The attorneys will now have an opportunity, if they wish, to make an opening statement. The opening statement gives the attorneys a chance to tell you what evidence they believe will be presented during the penalty phase of this trial. What the lawyers say during opening statements is not evidence, and you are not to consider it as such. After the attorneys have had the opportunity to present their opening statements, the State and the defendant may present evidence relative to the nature of the crime and the defendant's character, background, or life. You are instructed that this evidence is presented in order for you to determine, as you will be instructed, (1) whether each aggravating factor is proven beyond a reasonable doubt; (2) whether one or more aggravating factors exist beyond a reasonable doubt; (3) whether the aggravating factors found to exist beyond a reasonable doubt are sufficient to justify the imposition of the death penalty; (4) whether mitigating circumstances are proven by the greater weight of the evidence; (5) whether the aggravating factors outweigh the mitigating circumstances; and (6) whether the defendant should be sentenced to life imprisonment without the possibility of parole or death. At the conclusion of the evidence and after argument of counsel, you will be instructed on the law that will guide your deliberations.

An aggravating factor is a standard to guide the jury in making the choice between life imprisonment without the possibility of parole or death. It is a statutorily enumerated circumstance that increases the gravity of a crime or the harm to a victim.

You must unanimously agree that each aggravating factor was proven beyond a reasonable doubt before it may be considered by you in arriving at your final verdict. In order to consider the death penalty as a possible penalty, you must unanimously determine that at least one aggravating factor has been proven beyond a reasonable doubt.

The State has the burden to prove each aggravating factor beyond a reasonable doubt. A reasonable doubt is not a mere possible doubt, a speculative,

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imaginary, or forced doubt. Such a doubt must not influence you to disregard an aggravating factor if you have an abiding conviction that it exists. On the other hand, if, after carefully considering, comparing, and weighing all the evidence, you do not have an abiding conviction that the aggravating factor exists, or if, having a conviction, it is one which is not stable but one which wavers and vacillates, then the aggravating factor has not been proved beyond every reasonable doubt and you must not consider it in providing your verdict on the appropriate sentence to the court.

A reasonable doubt as to the existence of an aggravating factor may arise from the evidence, conflicts in the evidence, or the lack of evidence. If you have a reasonable doubt as to the existence of an aggravating factor, you must find that it does not exist. However, if you have no reasonable doubt, you should find that the aggravating factor does exist.

Before moving on to the mitigating circumstances, you must determine that the aggravating factors are sufficient to impose a sentence of death. If you do not unanimously agree that the aggravating factors are sufficient to impose death, do not move on to consider the mitigating circumstances.

If you find that the aggravating factors are sufficient to justify the imposition of the death penalty, it will then be your duty to determine whether the aggravating factors that you unanimously find to have been proven beyond a reasonable doubt outweigh the mitigating circumstances that you find exist. Unlike aggravating factors, you do not need to unanimously agree that a mitigating circumstance exist.

A mitigating circumstance is not limited to the facts surrounding the crime. It can be anything in the life of the defendant which might indicate that the death penalty is not appropriate for the defendant. In other words, a mitigating circumstance may include any aspect of the defendant's character, background, or life or any circumstance of the offense that reasonably may indicate that the death penalty is not an appropriate sentence in this case.

A mitigating circumstance need not be proven beyond a reasonable doubt by the defendant. A mitigating circumstance need only be proven by the greater weight of the evidence, which means evidence that more likely than not tends to prove the existence of a mitigating circumstance. If you determine by the greater weight of the evidence that a mitigating circumstance exists, you may consider it established and give that evidence such weight as you determine it should receive in reaching your conclusion as to the sentence to be imposed.